



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601-ZA20

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and
Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (“Secretary”), after consulting with interagency partners, to continue to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals, (“land POEs”) along the United States-Canada border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (“noncitizen non-LPRs”). Under the temporary restrictions, DHS will allow the processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID-19 and can provide proof of being fully vaccinated against COVID-19 upon request at arrival. According to the Centers for Disease Control and Prevention (“CDC”), vaccines remain the most effective public health measure to protect people from severe illness or death from COVID-19, slow the transmission of COVID-19, and reduce the likelihood of new COVID-19 variants emerging. These restrictions help protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. These restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID-19 vaccination in the international air travel context.

DATES: These restrictions will become effective at 12:00 a.m. Eastern Daylight Time (EDT) on April 22, 2022, and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.

FOR FURTHER INFORMATION CONTACT: Greta Campos, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202-344-2775.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security (“DHS”) published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Canada border to “essential travel,” as further defined in that document.¹ The March 24, 2020, Notification described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID-19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Canada posed a specific threat to human life or national interests. Under the March 24, 2020, Notification, DHS continued to allow certain categories of travel, described as “essential travel.” Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. On

¹ 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

October 21, 2021, DHS extended the restrictions until 11:59 p.m. EST on January 21, 2022.² In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID-19 – as well as then-recent increases in case levels, hospitalizations, and deaths due to the Delta variant – COVID-19 vaccines are effective against Delta and other known COVID-19 variants. These vaccines protect people from becoming infected with and severely ill from COVID-19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID-19 Response Coordinator’s September 2021 announcement regarding the United States’ plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID-19 beginning in early November 2021.³ DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to align the treatment of different types of travel and allow those who are fully vaccinated against COVID-19 to travel to the United States, whether for essential or non-essential reasons.⁴

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,⁵ DHS announced

² See 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border); 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border).

³ See Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/> (“As was announced in a call earlier today . . . [w]e — starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID-19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.”).

⁴ See 86 FR 58218; 86 FR 58216.

⁵ Changes to requirements for travel by air were implemented by, *inter alia*, Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (“Presidential Proclamation 10294”), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (“CDC Order”). See also CDC, *Requirement for Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States*, <https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf> (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States*, <https://www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf> (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, *Requirement for Proof of Negative COVID-19 Test Result or Recovery from COVID-19 for All Airline Passengers Arriving into the United States*,

https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID-19 and can provide proof of full COVID-19 vaccination status upon request.⁶ DHS also announced in October 2021 that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs – whether for essential or non-essential reasons – would be required to be fully vaccinated against COVID-19 and provide proof of full COVID-19 vaccination status. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID-19.⁷

On December 14, 2021, at DHS’s request, CDC provided a memorandum to DHS describing the current status of the COVID-19 public health emergency. The CDC memorandum warned of “case counts and deaths due to COVID-19 continuing to increase around the globe and the emergence of new and concerning variants,” and emphasized that “[v]accination is the single most important measure for reducing risk for SARS-CoV-2 transmission and avoiding severe illness, hospitalization, and death.”⁸ Consistent with these considerations and in line with DHS’s October 2021 announcement, CDC recommended that proof of COVID-19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

⁶ See 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada); 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico).

⁷ See DHS, DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings, <https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry> (Oct. 29, 2021); DHS, Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals, <https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals> (updated Jan. 20, 2022); *see also* DHS, Frequently Asked Questions: Guidance for Travelers to Enter the U.S., <https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us> (updated Jan. 20, 2022).

⁸ See Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

In support of this conclusion, CDC cited studies indicating that individuals vaccinated against COVID-19 are five times less likely to be infected with COVID-19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Conversely, unvaccinated people are 14 times more likely to die from COVID-19 than those who are vaccinated.⁹ Per CDC, “proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the Nation’s critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers.”¹⁰ In a January 14, 2022, update, CDC confirmed its prior recommendation. Specifically, CDC noted the “rapid increase” of COVID-19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID-19 increased by 24 percent over the prior week, and the seven-day average for new COVID-19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase had exacerbated the strain on the United States’ healthcare system and again urged that “[v]accination of the broadest number of people best protects all individuals and preserves the United States’ critical infrastructure, including healthcare systems and essential workforce.” CDC thus urged “the most comprehensive requirements possible for proof of vaccination” and specifically recommended against exceptions to travel restrictions for specific worker categories as a public health matter.¹¹

Given these recommendations, and after consultation with interagency partners and consideration of all relevant factors, including economic considerations, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United

⁹ *Id.*

¹⁰ *Id.*

¹¹ Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

States at land POEs along the United States-Canada border by requiring proof of COVID-19 vaccination upon request at arrival.¹² This requirement was put in place at 12:00 a.m. EST on January 22, 2022, and will remain in effect until 11:59 p.m. EDT on April 21, 2022, unless amended or rescinded prior to that time.

CDC's Public Health Assessment and Recommendation to Continue COVID-19

Vaccination Requirement for Entry of Noncitizen Non-LPR Travelers

In considering whether to extend the travel restrictions, DHS solicited, and CDC provided to DHS, an updated public health assessment and recommendations regarding the DHS requirement for noncitizen non-LPRs to be fully vaccinated and to provide proof of COVID-19 vaccination for entry at land POEs. CDC sent a memorandum to the Commissioner of U.S. Customs and Border Protection on March 21, 2022, with its recommendations.¹³ CDC reiterated that vaccination protects the public from severe illness, including deaths and hospitalizations.¹⁴ Of note, a recent CDC study found that, for those people hospitalized with COVID-19, severe outcomes, as measured by length of hospital stay and number of intensive care unit stays, appeared lower at the time when the Omicron variant was initially surging than during previous periods of high transmission associated with previous variants—something that CDC attributed in part to wider vaccination coverage and up-to-date boosters.¹⁵ This is consistent with CDC's assessment that vaccines remain the most effective public health measure to protect people from severe illness or death from

¹² See 87 FR 3429 (Jan. 24, 2022); 87 FR 3425 (Jan. 24, 2022) (parallel Mexico notification).

¹³ See Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders under Title 19 (March 21, 2022).

¹⁴ See Memorandum from CDC to CBP (March 21, 2022).

¹⁵ *COVID Data Tracker Weekly Review: Interpretive Summary for February 11, 2022*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/past-reports/02112022.html> (Feb. 11, 2022); see Memorandum from CDC to CBP (March 21, 2022).

COVID-19, slow transmission of COVID-19, and reduce the likelihood of new COVID-19 variants emerging.¹⁶

CDC also noted that the U.S. Government's actions and guidance in response to COVID-19 have evolved over the course of the pandemic as more scientific information has become available. During earlier phases of the pandemic, pharmaceutical interventions were unavailable, and the United States had to instead rely on largely nonpharmaceutical interventions, including limits on gatherings and school closures, masking, and testing. Expanded epidemiologic data, advances in scientific knowledge, and the availability of pharmaceutical interventions (both vaccines and effective treatments), however, have permitted many of those early actions to be dialed back in favor of a more nuanced and narrowly tailored set of tools that provide a less burdensome means of preventing and controlling COVID-19. In CDC's judgment, maintaining high vaccination coverage is essential to sustaining the use of less burdensome measures. To ensure sustained vaccine coverage, CDC recommends continuing both domestic efforts to increase vaccine uptake (primary series and booster doses) among U.S. residents and measures to ensure high rates of vaccination coverage among persons entering the United States.¹⁷

Echoing prior assessments, CDC's March 21, 2022, recommendation "encourages continued implementation of comprehensive requirements for proof of vaccination for *all* [noncitizen non-LPRs] seeking entry into the United States," whether by land or by air.¹⁸ CDC also once again recommended a "comprehensive" proof-of-vaccination requirement and recommended against "further exceptions for specific worker categories at this time," as global vaccination rates continue to rise.¹⁹

¹⁶ COVID-19 Vaccines Work, December 23, 2021. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html> (accessed March. 22, 2022).

¹⁷ See Memorandum from CDC to CBP (March 21, 2022).

¹⁸ *Id.*

¹⁹ See *id.*

Of particular importance to this analysis, COVID-19 vaccines – which according to CDC are “the single most important measure” for responding to COVID-19²⁰ – are widely available and have been increasingly available for months. As of April 8, 2022, in Canada, 81.39 percent of the entire population was fully vaccinated against COVID-19, while 85.59 percent of individuals five years and older are fully vaccinated against COVID-19.²¹ According to the U.S. Department of State, as of March 28, 2022, Mexico administered at least one vaccine dose to 85.5 million people (90 percent of the adult target population) and fully vaccinated 79.6 million (87.8 percent of the adult target population). Approximately 61.8 percent of Mexico's total population is fully vaccinated.

On April 14, 2022, DHS asked CDC whether CDC’s March 21, 2022, recommendations had changed over the preceding three weeks. CDC responded that its recommendations had not changed. CDC had reviewed the available data and concluded that its recommendations remain the same. CDC wrote that it “encourages continued implementation of comprehensive requirements for proof of vaccination for all [noncitizen non-LPRs] seeking entry into the United States for travel or commerce, whether by land or by air. Doing so will help maintain high vaccination coverage across the United States, which is essential to sustaining the advances we have made thus far and have allowed some early actions to be revised. CDC does not recommend further exceptions for specific worker categories at this time.”²²

Analysis of Temporary Travel Restrictions under 19 U.S.C. 1318

DHS has consulted with interagency partners, taking into account relevant factors, including the above-mentioned CDC public health assessment, economic considerations, and

²⁰ See Memorandum from CDC to CBP (Dec. 14, 2021).

²¹ Canadian statistics may be found at: <https://health-infobase.canada.ca/covid-19/vaccination-coverage/> (accessed Apr. 17, 2022).

²² See Memorandum from CDC to CBP, Update: Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders under Title 19 (Apr. 14, 2022).

operational impacts,²³ and concludes that a broad COVID-19 vaccination requirement at land POEs remains necessary and appropriate. In reaching this conclusion, DHS also reviewed a range of concerns, including those related to potential impacts on employers seeking H-2A temporary agricultural workers and entities that employ or rely on long-haul truck drivers engaged in cross-border transportation of goods. After careful review, DHS has determined not to provide industry-specific exceptions for the following two key reasons: (1) workers engaged in trucking and agriculture continue to present a public health risk if not vaccinated; and (2) the vaccination requirement that has been in place since January 22, 2022, has not materially disrupted cross-border economic activity, according to data analysis that included input from DHS and other federal agencies.

First, even if particular workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of being infected and spreading COVID-19. It is for this reason, and because vaccines are widely available, that as a public health matter, CDC once again did not recommend further exceptions for specific worker categories at this time.²⁴ Such workers also may enter the United States after contracting COVID-19 elsewhere, become seriously ill after arrival, and require hospitalization and use of limited healthcare resources as a result. A COVID-19 vaccination requirement at land POEs helps protect the health and safety of personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among members of the public. Such a requirement also reduces potential burdens on local healthcare resources in U.S. communities.

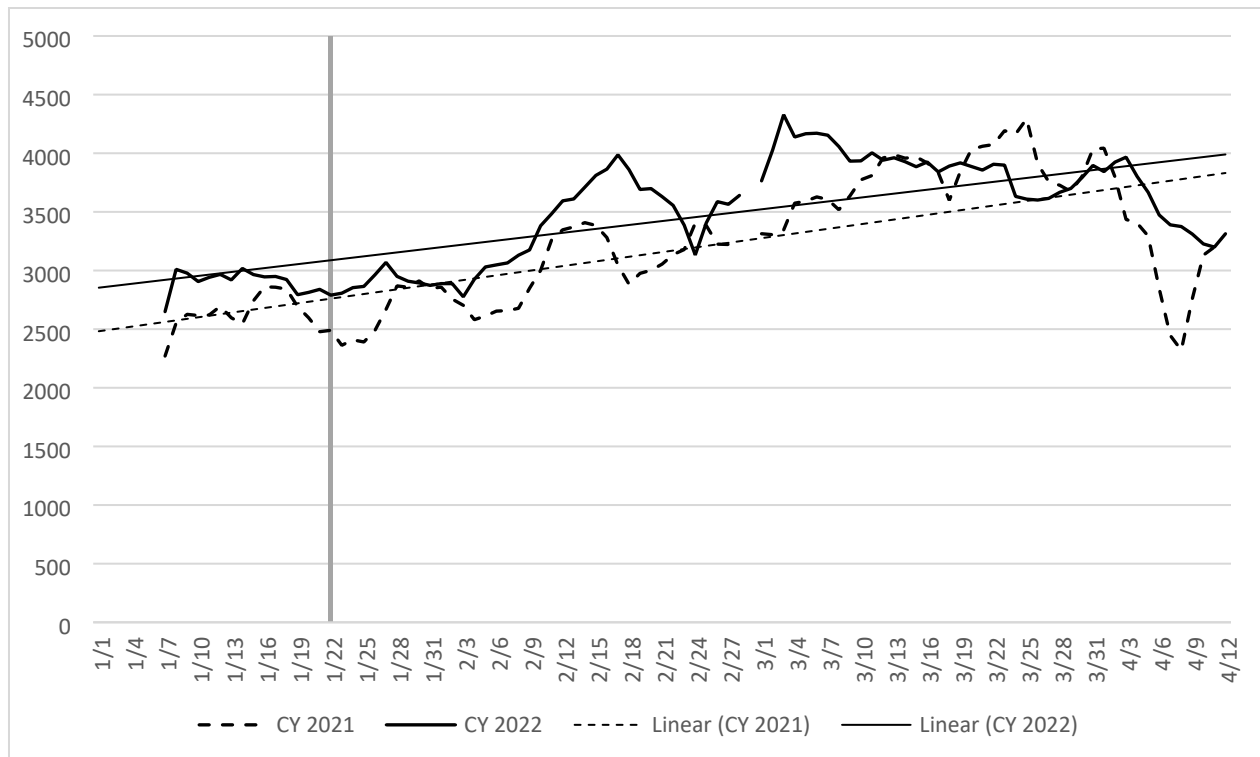
²³ Consistent with its assessment in January, CBP continues to assess that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily or near-daily basis, for work or school. A negative COVID-19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.

²⁴ See Memorandum from CDC to CBP (Mar. 21, 2022).

Second, DHS data, as well as that provided by other federal agencies, does not indicate a material disruption to cross-border economic activity and movement resulting from the vaccination requirement imposed in January 2022, including among temporary agriculture workers and commercial truck drivers. In fact, there has been an increase, not decrease, in the number of H-2A nonimmigrant workers admitted to the United States as compared to last year. While it is possible that there are individual-level effects on a subset of workers who are not fully vaccinated or their current or prospective employers, such impacts appear marginal based on the aggregate data.

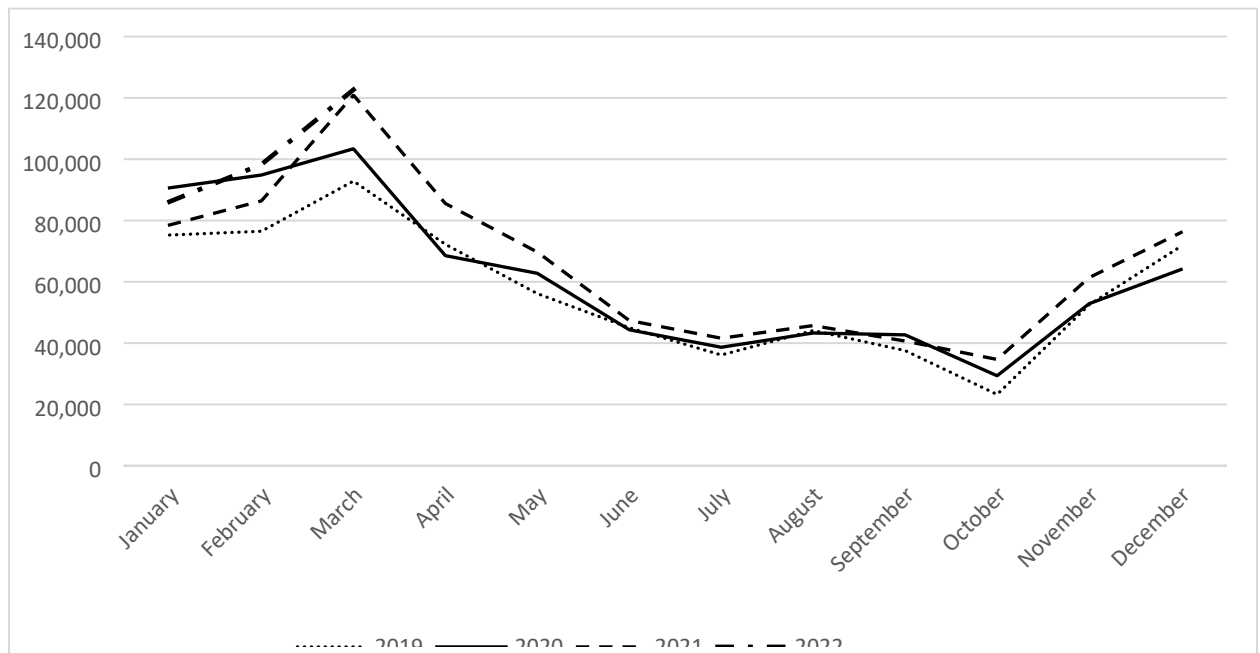
As shown in *Figure 1* (where the vertical line represents the date the vaccination requirement for noncitizen non-LPRs went into full effect), H-2A admissions this fiscal year generally track seasonal patterns, which have reflected a longer-term increase in H-2A admissions since 2019, as shown in *Figure 2*. In fact, as stated above, H-2A admissions were generally higher between January 22, 2022 and March 31, 2022 when the COVID-19 vaccination requirement has been in place, as compared to H-2A admission numbers for the same time in 2021.

Figure 1. Rolling Average of H-2A Admissions (7 days)



Data Source: BorderStat. April 13, 2022.

Figure 2. Total Monthly H-2A Admissions

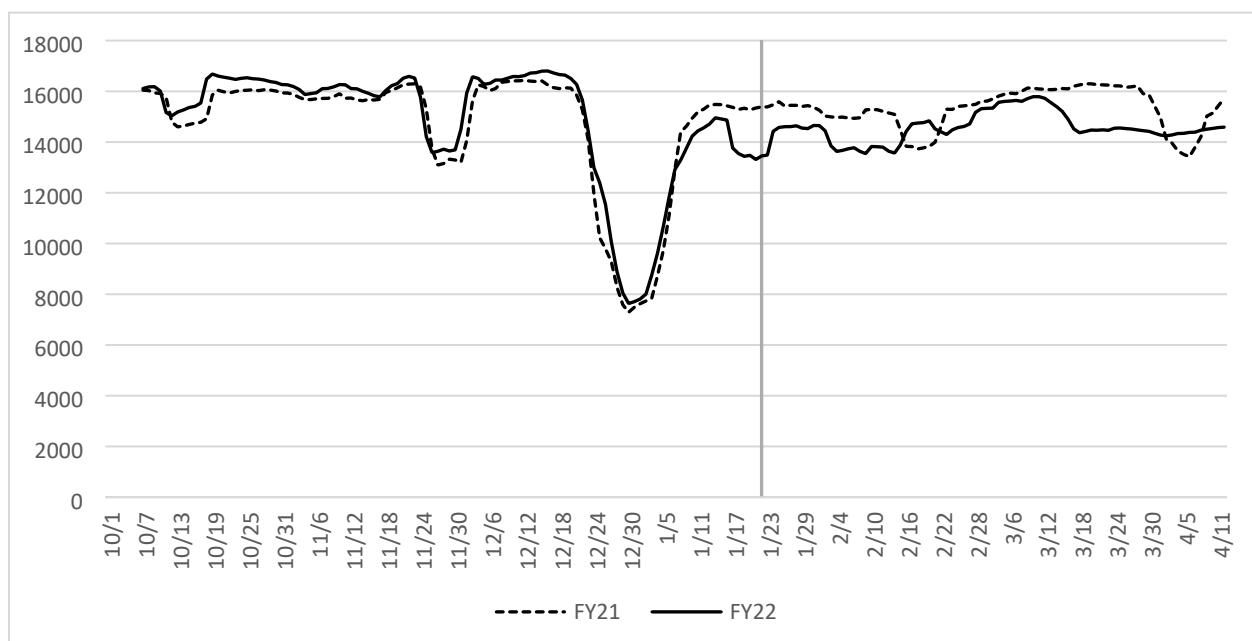


Data Source: BorderStat. April 13, 2022.

Likewise, there was no significant decrease in border crossings by commercial truck following the vaccination requirement that went into effect on January 22, 2022. *Figures 3 and 4* cover the months before the new vaccination requirement was implemented as well as

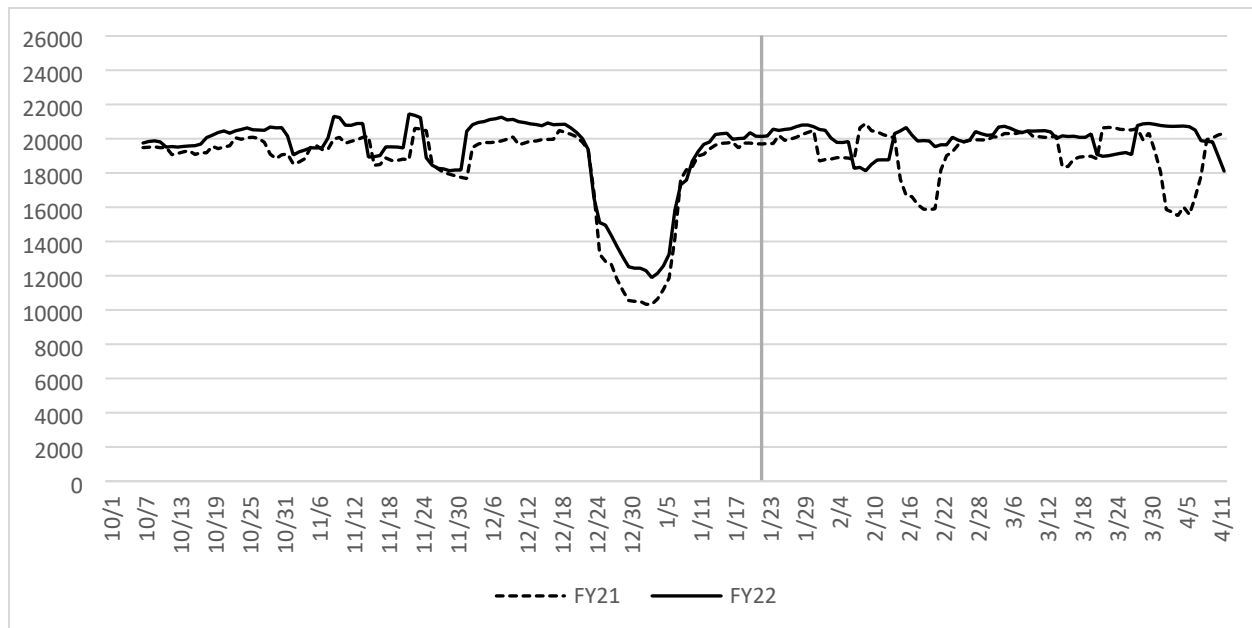
the months when the new vaccination requirement was implemented. This data shows regular fluctuations generally consistent with what is seen in data for the same time in Fiscal Year 2021 and in the months in 2022 before the new vaccination requirement went into effect. And while the aggregate number of commercial trucks entering the United States from Canada in 2022 is lower than 2021, this initial decrease predates the implementation of the new vaccination requirement on January 22, 2022, and is not mirrored on the Southern border, where commercial truck traffic appears to have slightly increased in 2022.

Figure 3. Rolling Average of Northern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

Figure 4. Rolling Average of Southern Border Truck Crossings (7 days) by Fiscal Year



Data Source: BorderStat. April 13, 2022.

DHS, in consultation with interagency partners, also has considered the operational effect of these requirements. In the January 2022 Notification, DHS projected minimal short-term operational impact. The relevant data that DHS and other federal agency partners have analyzed indicate that these projections were accurate. DHS has closely monitored wait times at land POEs, examined cross-border movement, and analyzed available data on border crossings since the vaccination requirement went into effect at land POEs on January 22, 2022, and has observed very minimal operational disruptions. As travelers become more familiar with the vaccination requirement and vaccination rates continue to increase globally, DHS projects any operational impacts to further diminish.

Based on the foregoing analysis and CDC recommendations, with this Notification, DHS will continue to align COVID-19 travel restrictions applicable to land POEs with those that apply to incoming international air travel,²⁵ ensuring more consistent application of COVID-19 vaccination requirements across travel domains. As a result, with limited exception, all noncitizen non-LPRs will be required, upon request, to show proof of full vaccination against COVID-19 to enter the United States.

²⁵ See Presidential Proclamation 10294, *supra*, at n.5.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID-19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.” Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),²⁶ I have determined, in consultation with CDC and other interagency partners, that it is necessary to respond to the ongoing threat at land POEs along the United States-Canada border by allowing the processing of travelers to the United States for only those noncitizen non-LPRs who are “fully vaccinated against COVID-19” and can provide “proof of being fully vaccinated against COVID-19” upon request, as those terms are defined under Presidential Proclamation 10294 and CDC’s implementing Order (“CDC Order”).²⁷ This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or American Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs:²⁸

²⁶ 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep’t Order No. 100-16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

²⁷ 86 FR 61224 (Nov. 5, 2021).

²⁸ The exceptions to this temporary restriction are generally aligned with those outlined in Presidential Proclamation 10294 and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.

- certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID-19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID-19 vaccine as specified in the CDC Order;
- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B-1 [business] or B-2 [tourism] visas) who are citizens of a country with limited COVID-19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizen non-LPRs seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an exception to this requirement to provide proof of eligibility consistent with documentation requirements outlined in CDC's Technical Instructions.²⁹

This Notification does not apply to air or sea travel (except ferries and pleasure craft) between the United States and Canada. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These

²⁹ CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic and CDC's Order, <https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html> (last reviewed Mar. 3, 2022).

restrictions address temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes in Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.³⁰ In conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law. In the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID-19 transmission over our shared borders and therefore directly “involve[s] . . . a . . . foreign affairs function of the United States.” Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the ongoing public health emergency caused by COVID-19, including the rapidly evolving circumstances associated with fluctuating rates of infection due to the Omicron variant and other potential future variants, it would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary measures set forth in this Notification.

³⁰ Although past notifications of this type have sunset on dates certain, DHS has determined, in light of the analysis above, to instead engage in regular reviews of this policy, guided by public health data and other relevant inputs. In determining whether and when to lift the requirements imposed under this notification, DHS anticipates that it will take account of whether Presidential Proclamation 10294 remains in effect, among all relevant factors, consistent with the requirements of 19 U.S.C. 1318. DHS anticipates lifting the requirements imposed under this notification no later than when Presidential Proclamation 10294 is revoked.

Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.

Alejandro N. Mayorkas

Secretary,

U.S. Department of Homeland Security.

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